

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

WOLF RUN HOLLOW LLC,	§	
	§	
	§	
Plaintiff,	§	
	§	
v.	§	
	§	Civil Action No. 2:10-cv-00038
HUNTINGTON STATE BANK,	§	
AMERICAN STATE BANK,	§	JURY TRIAL DEMANDED
GUARANTY BOND BANK,	§	
AMERICAN BANK OF TEXAS,	§	
FIRST STATE BANK OF BEN	§	
WHEELER,	§	
SOUTHSIDE BANK,	§	
CITIZENS STATE BANK,	§	
INDEPENDENT BANK,	§	
PROSPERITY BANCSHARES, INC.,	§	
PROSPERITY BANK,	§	
VALLIANCE BANK,	§	
ACCESS 1 ST CAPITAL BANK,	§	
and	§	
SANGER BANK,	§	
	§	
Defendants.	§	

PLAINTIFF'S ORIGINAL COMPLAINT

Plaintiff Wolf Run Hollow LLC ("Plaintiff"), by and through its undersigned counsel, files this Original Complaint against Huntington State Bank, American State Bank, Guaranty Bond Bank, American Bank of Texas, First State Bank of Ben Wheeler, Southside Bank, Citizens State Bank, Independent Bank, Prosperity Bancshares, Inc., Prosperity Bank, Valliance Bank, Access 1st Capital Bank, and Sanger Bank (collectively "Defendants") as follows:

NATURE OF THE ACTION

1. This is a patent infringement action to stop Defendants' infringement of

Plaintiff's United States Patent No. 6,115,817 entitled "Methods and Systems for Facilitating Transmission of Secure Messages Across Insecure Networks" (the "'817 patent"; a copy of which is attached hereto as Exhibit A). Plaintiff is the exclusive licensee of the '817 patent with respect to the Defendants. Plaintiff seeks injunctive relief and monetary damages.

PARTIES

2. Plaintiff is a limited liability company organized and existing under the laws of the State of Delaware. Plaintiff maintains its principal place of business at 170 Kinnelon Road, Suite 13, Kinnelon, New Jersey 07405. Plaintiff is authorized to do business in Texas. Plaintiff is the exclusive licensee of the '817 patent with respect to the Defendants, and possesses the right to sue for infringement and recover past damages.

3. Upon information and belief, Huntington State Bank ("HSB") is a corporation organized and existing under the laws of the State of Texas, with its principal place of business located at 208 Highway 69 South, Huntington, Texas 75949.

4. Upon information and belief, American State Bank ("ASB") is a corporation organized and existing under the laws of the State of Texas, with its principal place of business located 102 West Front Street, Arp, Texas 75750.

5. Upon information and belief, Guaranty Bond Bank ("Guaranty Bond") is a corporation organized and existing under the laws of the State of Texas, with its principal place of business located at 100 West Arkansas, Mount Pleasant, Texas 75455.

6. Upon information and belief, American Bank of Texas ("American Bank") is a corporation organized and existing under the laws of the State of Texas, with its principal place of business located at 2011 Texoma Parkway, Sherman, Texas 75090.

7. Upon information and belief, First State Bank of Ben Wheeler (“First State Bank”) is a corporation organized and existing under the laws of the State of Texas, with its principal place of business located at 14269 State Highway 64, Ben Wheeler, Texas 75754.

8. Upon information and belief, Southside Bank (“Southside Bank”) is a corporation organized and existing under the laws of the State of Texas, with its principal place of business located at 1201 South Beckham, Tyler, Texas 75701.

9. Upon information and belief, Citizens State Bank (“CSB”) is a corporation organized and existing under the laws of the State of Texas, with its principal place of business located at 101 Live Oak, Marlin, Texas 76661.

10. Upon information and belief, Independent Bank (“Independent Bank”) is a corporation organized and existing under the laws of the State of Texas, with its principal place of business located at 3090 Craig Drive, McKinney, Texas 75070.

11. Upon information and belief, Prosperity Bancshares, Inc. (“Prosperity Bancshares”) is a corporation organized and existing under the laws of the State of Texas, with its principal place of business located at Prosperity Bank Plaza, 4295 San Felipe, Houston, Texas 77027.

12. Upon information and belief, Prosperity Bank (“Prosperity Bank”) is a corporation organized and existing under the laws of the State of Texas, with its principal place of business located at 1301 North Mechanic, El Campo, Texas 77437. Prosperity Bancshares and Prosperity Bank are collectively referred to as the “Prosperity Bank Defendants.”

13. Upon information and belief, Valliance Bank (“Valliance Bank”) is a corporation organized and existing under the laws of the State of Texas, with its principal place of business located at 5900 South Lake Forest Drive, Suite 100, McKinney, Texas 75070.

14. Upon information and belief, Access 1st Capital Bank (“Access 1st”) is a corporation organized and existing under the laws of the State of Texas, with its principal place of business located at 320 West Eagle Drive, Suite 100, Denton, Texas 76201.

15. Upon information and belief, Sanger Bank (“Sanger Bank”) is a corporation organized and existing under the laws of the State of Texas, with its principal place of business located at 501 North Stemmons, Sanger, Texas 76266.

JURISDICTION AND VENUE

16. This action arises under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*, including 35 U.S.C. §§ 271, 281, 283, 284, and 285. This Court has subject matter jurisdiction over this case for patent infringement under 28 U.S.C. §§ 1331 and 1338(a).

17. The Court has personal jurisdiction over each Defendant because: each Defendant has minimum contacts within the State of Texas and the Eastern District of Texas; each Defendant has purposefully availed itself of the privileges of conducting business in the State of Texas and in the Eastern District of Texas; each Defendant has sought protection and benefit from the laws of the State of Texas; each Defendant regularly conducts business within the State of Texas and within the Eastern District of Texas; and Plaintiff’s causes of action arise directly from Defendants’ business contacts and other activities in the State of Texas and in the Eastern District of Texas.

18. More specifically, each Defendant, directly and/or through intermediaries, ships, distributes, offers for sale, sells, and/or advertises (including the provision of an interactive web page) its products and services in the United States, the State of Texas, and the Eastern District of Texas. Upon information and belief, each Defendant has committed patent infringement in

the State of Texas and in the Eastern District of Texas, has contributed to patent infringement in the State of Texas and in the Eastern District of Texas, and/or has induced others to commit patent infringement in the State of Texas and in the Eastern District of Texas. Each Defendant solicits customers in the State of Texas and in the Eastern District of Texas. Each Defendant has many paying customers who are residents of the State of Texas and the Eastern District of Texas and who each use respective Defendant's products and services in the State of Texas and in the Eastern District of Texas.

19. Venue is proper in the Eastern District of Texas pursuant to 28 U.S.C. §§ 1391 and 1400(b).

COUNT I – PATENT INFRINGEMENT

20. The '817 patent was duly and legally issued by the United States Patent and Trademark Office on September 5, 2000 after full and fair examination. Plaintiff is the exclusive licensee of the '817 patent with respect to the Defendants, and possesses all rights of recovery under the '817 patent with respect to the Defendants, including the right to sue for infringement and recover past damages.

21. Upon information and belief, HSB has infringed and continues to infringe one or more claims of the '817 patent by making, using, providing, offering to sell, and selling (directly or through intermediaries), in this district and elsewhere in the United States, secure messaging systems and methods, including via the website <http://www.huntingtonstatebank.com>. Upon information and belief, HSB acts as the mastermind to direct or control users to request, transmit and/or receive secure messages via their secure messaging systems and methods. Upon information and belief, HSB has also contributed to the infringement of one or more claims of

the '817 patent, and/or actively induced others to infringe one or more claims of the '817 patent, in this district and elsewhere in the United States.

22. Upon information and belief, ASB has infringed and continues to infringe one or more claims of the '817 patent by making, using, providing, offering to sell, and selling (directly or through intermediaries), in this district and elsewhere in the United States, secure messaging systems and methods, including via the website <http://www.asbt.com>. Upon information and belief, ASB acts as the mastermind to direct or control users to request, transmit and/or receive secure messages via its secure messaging systems and methods. Upon information and belief, ASB has also contributed to the infringement of one or more claims of the '817 patent, and/or actively induced others to infringe one or more claims of the '817 patent, in this district and elsewhere in the United States.

23. Upon information and belief, Guaranty Bond has infringed and continues to infringe one or more claims of the '817 patent by making, using, providing, offering to sell, and selling (directly or through intermediaries), in this district and elsewhere in the United States, secure messaging systems and methods, including via the website <http://www.gnty.com>. Upon information and belief, Guaranty Bond acts as the mastermind to direct or control users to request, transmit and/or receive secure messages via its secure messaging systems and methods. Upon information and belief, Guaranty Bond has also contributed to the infringement of one or more claims of the '817 patent, and/or actively induced others to infringe one or more claims of the '817 patent, in this district and elsewhere in the United States.

24. Upon information and belief, American Bank has infringed and continues to infringe one or more claims of the '817 patent by making, using, providing, offering to sell, and selling (directly or through intermediaries), in this district and elsewhere in the United States,

secure messaging systems and methods, including via the website <http://www.abtexas.com>. Upon information and belief, American Bank acts as the mastermind to direct or control users to request, transmit and/or receive secure messages via its secure messaging systems and methods. Upon information and belief, American Bank has also contributed to the infringement of one or more claims of the '817 patent, and/or actively induced others to infringe one or more claims of the '817 patent, in this district and elsewhere in the United States.

25. Upon information and belief, First State Bank has infringed and continues to infringe one or more claims of the '817 patent by making, using, providing, offering to sell, and selling (directly or through intermediaries), in this district and elsewhere in the United States, secure messaging systems and methods, including via the website <http://www.fsbbsenwheeler.com>. Upon information and belief, First State Bank acts as the mastermind to direct or control users to request, transmit and/or receive secure messages via their secure messaging systems and methods. Upon information and belief, First State Bank has also contributed to the infringement of one or more claims of the '817 patent, and/or actively induced others to infringe one or more claims of the '817 patent, in this district and elsewhere in the United States.

26. Upon information and belief, Southside Bank has infringed and continues to infringe one or more claims of the '817 patent by making, using, providing, offering to sell, and selling (directly or through intermediaries), in this district and elsewhere in the United States, secure messaging systems and methods, including via the website <http://www.southside.com>. Upon information and belief, Southside Bank acts as the mastermind to direct or control users to request, transmit and/or receive secure messages via its secure messaging systems and methods. Upon information and belief, Southside Bank has also contributed to the infringement of one or

more claims of the '817 patent, and/or actively induced others to infringe one or more claims of the '817 patent, in this district and elsewhere in the United States.

27. Upon information and belief, CSB has infringed and continues to infringe one or more claims of the '817 patent by making, using, providing, offering to sell, and selling (directly or through intermediaries), in this district and elsewhere in the United States, secure messaging systems and methods, including via the website <http://www.citizensbank.net>. Upon information and belief, CSB acts as the mastermind to direct or control users to request, transmit and/or receive secure messages via its secure messaging systems and methods. Upon information and belief, CSB has also contributed to the infringement of one or more claims of the '817 patent, and/or actively induced others to infringe one or more claims of the '817 patent, in this district and elsewhere in the United States.

28. Upon information and belief, Independent Bank has infringed and continues to infringe one or more claims of the '817 patent by making, using, providing, offering to sell, and selling (directly or through intermediaries), in this district and elsewhere in the United States, secure messaging systems and methods, including via the website <http://www.independent-bank.com>. Upon information and belief, Independent Bank acts as the mastermind to direct or control users to request, transmit and/or receive secure messages via its secure messaging systems and methods. Upon information and belief, Independent Bank has also contributed to the infringement of one or more claims of the '817 patent, and/or actively induced others to infringe one or more claims of the '817 patent, in this district and elsewhere in the United States.

29. Upon information and belief, the Prosperity Bank Defendants have infringed and continue to infringe one or more claims of the '817 patent by making, using, providing, offering to sell, and selling (directly or through intermediaries), in this district and elsewhere in the

United States, secure messaging systems and methods, including via the website <http://www.prosperitybanktx.com>. Upon information and belief, the Prosperity Bank Defendants act as the mastermind to direct or control users to request, transmit and/or receive secure messages via its secure messaging systems and methods. Upon information and belief, the Prosperity Bank Defendants have also contributed to the infringement of one or more claims of the '817 patent, and/or actively induced others to infringe one or more claims of the '817 patent, in this district and elsewhere in the United States.

30. Upon information and belief, Valliance Bank has infringed and continues to infringe one or more claims of the '817 patent by making, using, providing, offering to sell, and selling (directly or through intermediaries), in this district and elsewhere in the United States, secure messaging systems and methods, including via the website <http://www.texasvbank.com>. Upon information and belief, Valliance Bank acts as the mastermind to direct or control users to request, transmit and/or receive secure messages via its secure messaging systems and methods. Upon information and belief, Valliance Bank has also contributed to the infringement of one or more claims of the '817 patent, and/or actively induced others to infringe one or more claims of the '817 patent, in this district and elsewhere in the United States.

31. Upon information and belief, Access 1st has infringed and continues to infringe one or more claims of the '817 patent by making, using, providing, offering to sell, and selling (directly or through intermediaries), in this district and elsewhere in the United States, secure messaging systems and methods, including via the website <http://www.a1stcb.com>. Upon information and belief, Access 1st acts as the mastermind to direct or control users to request, transmit and/or receive secure messages via its secure messaging systems and methods. Upon information and belief, Access 1st has also contributed to the infringement of one or more claims

of the '817 patent, and/or actively induced others to infringe one or more claims of the '817 patent, in this district and elsewhere in the United States.

32. Upon information and belief, Sanger Bank has infringed and continues to infringe one or more claims of the '817 patent by making, using, providing, offering to sell, and selling (directly or through intermediaries), in this district and elsewhere in the United States, secure messaging systems and methods, including via the website <http://www.sangerbank.com>. Upon information and belief, Sanger Bank acts as the mastermind to direct or control users to request, transmit and/or receive secure messages via its secure messaging systems and methods. Upon information and belief, Sanger Bank has also contributed to the infringement of one or more claims of the '817 patent, and/or actively induced others to infringe one or more claims of the '817 patent, in this district and elsewhere in the United States.

33. Each Defendant's aforesaid activities have been without authority and/or license from Plaintiff.

34. Plaintiff is entitled to recover from the Defendants the damages sustained by Plaintiff as a result of the Defendants' wrongful acts in an amount subject to proof at trial, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

35. Defendants' infringement of Plaintiff's exclusive rights under the '817 patent will continue to damage Plaintiff, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

JURY DEMAND

36. Plaintiff hereby requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

PRAYER FOR RELIEF

Plaintiff respectfully requests that the Court find in its favor and against Defendants, and that the Court grant Plaintiff the following relief:

- A. An adjudication that one or more claims of the '817 patent have been infringed, either literally and/or under the doctrine of equivalents, by one or more Defendants and/or by others to whose infringement Defendants have contributed and/or by others whose infringement has been induced by Defendants;
- B. An award to Plaintiff of damages adequate to compensate Plaintiff for the Defendants' acts of infringement together with pre-judgment and post-judgment interest;
- C. That one or more of the Defendants' acts of infringement be found to be willful from the time that Defendants became aware of the infringing nature of their actions, which is the time of filing of Plaintiff's Original Complaint at the latest, and that the Court award treble damages for the period of such willful infringement pursuant to 35 U.S.C. § 284;
- D. A grant of permanent injunction pursuant to 35 U.S.C. § 283, enjoining the Defendants from further acts of (1) infringement, (2) contributory infringement, and (3) actively inducing infringement with respect to the claims of the '817 patent;
- E. That this Court declare this to be an exceptional case and award Plaintiff its reasonable attorneys' fees and costs in accordance with 35 U.S.C. §285; and
- F. Any further relief that this Court deems just and proper.

Respectfully submitted,

Dated: February 2, 2010

/s/ William E. Davis, III
William E. Davis, III
TX State Bar No. 24047416

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